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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,993	02/04/2000	Bradley Paul Barber	2925-0401P	8152
30595	7590	06/10/2003		
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195			EXAMINER	
			TUGBANG, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3729	
DATE MAILED: 06/10/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/497,993	BARBER ET AL. <i>OD</i>
	<b>Examiner</b>	<b>Art Unit</b>
	A. Dexter Tugbang	3729

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 May 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6-13 and 15-32 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 and 17-28 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,10-13,15,16,29-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____                                     |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/7/03 has been entered.

### ***Election/Restrictions***

2. Claims 6-9 and 17-28 continue to stand as being withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 10-13, 15, 16 and 29-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In Claim 1, the phrase of “to form a complete acoustic resonator device” (line 7) is new matter. The specification and drawings, as originally filed, does not provide support for the resonator device being a “complete acoustic resonator device” as this relates specifically to the patterning of the second metal film or any other method steps. The specification does not even define what is meant by the phrase of a “complete acoustic resonator device”, particularly with the term “complete”.

In Claim 13, similar problems above with Claim 1 also occur in claim 13.

In each of Claims 30 and 32, the recitation of “wherein the continuous piezoelectric layer is not patterned” (lines 1-2) is new matter. Deposition of the piezoelectric material alone is considered to be a form of patterning (as required in each of Claims 1 and 13) and the phrase of “not patterned” excludes and contradicts even deposition of the piezoelectric material.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 10-13, 15, 16 and 29-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, there are four significant problems with the language of the claims, in which the examiner notes below. First, the phrase of a “complete acoustic resonator device” (line 7) is unclear if this is referring to the previous phrase of an “acoustic resonator device” in the preamble. Second, how many acoustic resonator devices are there? Third, how can the acoustic resonator device be considered to be “complete” (line 7) after patterning of the second metal occurs and yet there is at least another step of removing some piezoelectric material “after said

acoustic resonator device is formed by a selective etching process" (lines 9-10)? Fourth, the phrases of "complete" (line 7) and "after said acoustic resonator device is formed" (line 9) completely contradict one another, which renders the claims as being vague, indefinite, misleading and confusing.

Claim 13 contains similar language and presents the same problems as with Claim 1 above.

NOTE: No art rejections have been applied to the claims since there are a great deal of confusion and uncertainty as to the proper interpretation of the limitations of claims. Therefore, it would not be proper to reject such claims on the basis of prior art. See MPEP 2173.06.

#### *Response to Arguments*

7. Applicant's arguments with respect to Claims 1, 10-13, 15, 16 and 29-32 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dexter Tugbang whose telephone number is 703-308-7599. The examiner can normally be reached on Monday - Friday 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3588 for After Final communications.

Art Unit: 3729

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is 703-308-0858.



A. Dexter Tugbang  
Primary Examiner  
Art Unit 3729

June 2, 2003